

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DENNY MEKENYE
USDOT 1719805
Individually, and

DENNY MEKENYE DBA
DEMCO EXPRESS AND/OR
DEMCO TRANS, INC.

* Order No.: TX-2012-5000 IMH
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* Service Date: _____
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IMMINENT HAZARD OPERATIONS
OUT-OF-SERVICE ORDER

This notice is an Imminent Hazard Operations Out-of-Service Order (“ORDER”) by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Darrell Ruban. This ORDER applies to **DENNY MEKENYE**, Individually, and **DENNY MEKENYE dba DEMCO EXPRESS** and/or **DEMCO TRANS, INC.**, USDOT Number 1719805 and/or USDOT Number 1314229 (collectively referred to herein as “you,” “your,” and /or “**DEMCO**”), as well as any and all officers, directors, successors, assigns and closely affiliated companies.

The United States finds your commercial motor vehicle operations and the continued operations of your commercial motor vehicles (identified in ATTACHMENT A attached hereto and hereinafter referred to as “commercial motor vehicles,” “motor vehicles,” and/or “vehicles”) constitute an “**IMMINENT HAZARD.**” This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicles poses an

“imminent hazard” to public safety.

EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE AND INTRASTATE TRANSPORTATION OF VEHICLES AND/OR GOODS BY DRIVERS. FURTHER THE COMMERCIAL MOTOR VEHICLES IDENTIFIED IN ATTACHMENT A, ATTACHED HERETO, ARE PROHIBITED FROM BEING OPERATED IN INTERSTATE OR INTRASTATE COMMERCE BY ANY OTHER MOTOR CARRIER OR ANY DRIVER.

Commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the cargo can be safely secured. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY THE COMMERCIAL MOTOR VEHICLES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA SOUTHERN SERVICE CENTER.

I. JURISDICTION

DEMCO is a motor carrier engaged in interstate commerce and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136). DEMCO is required to comply, and to ensure its drivers comply, with the FMCSRs. (49 C.F.R. § 390.11). This ORDER applies to **DENNY MEKENYE**, Individually, and **DENNY MEKENYE dba DEMCO EXPRESS** and/or **DEMCO TRANS, INC.**, USDOT Number 1719805 and/or USDOT Number 1314229 (collectively referred to herein as “you,” “your,” and /or

“DEMCO”), as well as any and all officers, directors, successors, assigns and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by you, including but not limited to commercial motor vehicles identified in ATTACHMENT A, attached hereto. You may not use lessees, lessors, owner-operators, affiliates, assigns, or other commercial motor vehicles or motor carriers to conduct any continued operations.

II. BASIS FOR ORDER

The basis for determining that your motor carrier operations pose an imminent hazard to the public is that DEMCO fails to monitor and ensure that its drivers comply with drivers’ hours of service requirements, drivers’ qualification requirements, commercial drivers’ licensing requirements, and the random controlled substances testing requirements. The FMCSA Safety Measurement System (“SMS”) also indicates that DEMCO exceeds by a significant margin the intervention thresholds in five of the seven BASIC: Unsafe Driving (97.1%), Fatigued Driving (99.4%), Driver Fitness (99.8%), Drugs and Alcohol (81.2%), and Vehicle Maintenance (97.1%).¹ Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to DEMCO drivers and to the motoring public.

¹ The SMS is a tool for assessing available roadside performance data and ranking an entity’s relative performance in any of the six Behavior Analysis and Safety Improvement Categories (BASICS). The SMS quantifies the on-road safety performance of individual entities to identify entities with significant safety problems, determine the specific safety problems an entity exhibits, and monitor safety problems through the Agency’s Intervention Process. The SMS computes a percentile for each BASIC on a 0-100 scale and assigns a percentile rank to each BASIC, with 100 indicating the worst performance. DEMCO’s score is near the worst safety performance in these five BASICS.

III. BACKGROUND

On May 7 2012, FMCSA initiated an investigation of DEMCO uncovering violations of the FMCSRs so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSR. Indeed, DEMCO's operations are reckless, with its management unable to demonstrate basic safety management controls despite repeated investigations and enforcement actions.

DEMCO does not monitor its drivers' hours of service (HOS) to ensure that its drivers do not violate the HOS regulations. In fact, when comparing the records of duty status (RODS) to global positioning system (GPS) information, falsification of drivers' RODS at DEMCO is so severe, DEMCO has no way to know how many hours its drivers have been driving. DEMCO's negligent oversight of its drivers result in drivers operating commercial motor vehicles at a time when they may be fatigued because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or other HOS regulations.

In addition, DEMCO does not follow FMCSA mandated random controlled substance testing requirements to ensure that its drivers are able to safely operate its commercial motor vehicles. DEMCO has not tested its drivers at the proper random rate for controlled substances, is not testing all of the drivers for controlled substance tests as required and it is not reasonably spreading its tests throughout the year. DEMCO also fails to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its commercial motor vehicles. DEMCO is not conducting annual reviews of its drivers' driving records, or maintaining copies of the drivers' State driving records. DEMCO's failure to monitor its drivers' qualifications is so severe that in the last 12 months, 10 of its drivers have been placed out of service for not being licensed to drive. DEMCO does not have a proper system in place to prevent the operation of

commercial motor vehicles by drivers without proper commercial drivers' licenses. DEMCO has allowed multiple drivers to operate with commercial driver's licenses that have been suspended, revoked, or disqualified. In fact, at the time of this investigation, one DEMCO driver was driving with at least four (4) active suspensions on his license. Indeed, DEMCO's Driver Fitness BASIC score of 99.8% exceeds the established BASIC threshold and is alarmingly high.

DEMCO's BASIC scores in Unsafe Driving (97.1%), Fatigued Driving (99.4%), Drugs and Alcohol (81.2%), and Vehicle Maintenance (97.1%) also exceed the established BASIC threshold and reflect its dismal safety performance. As for Drugs and Alcohol, DEMCO's BASIC scores are alarmingly high at 81.2% for April, 86.5% for March, 90.1% for February, and 92.1% for January, 2012.

DEMCO's continued and blatant disregard for the FMCSR establishes an imminently hazardous and potentially deadly risk for its drivers and the motor public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before DEMCO will be permitted to resume operations placed out of service by this Order, DEMCO must take specific steps to ensure and demonstrate compliance with the FMCSR.

YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER

- 1. The commercial motor vehicles identified in Attachment A to this Order may not be operated in interstate and/or intrastate commerce by any entity or by any individual until you have fully complied with the Remedial Actions set forth in this section.**
- 2. DEMCO must ensure and demonstrate that its vehicles are in a safe operating condition, are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories**

Necessary for Safe Operations) and Part 396 (Vehicle Maintenance), and there is an adequate maintenance program in place to ensure compliance with the FMCSR.

- 3. DEMCO must require its drivers to prepare accurate Daily Vehicle Inspection Reports at the end of each shift, implement and document a procedure in writing so that its drivers can report safety defects and/or deficiencies, and establish procedures to document and ensure that reported safety defects and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again. DEMCO must train its drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.**
- 4. DEMCO must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. DEMCO must ensure that every driver it uses has completed and furnished an employment application. DEMCO must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. DEMCO must ensure that an annual list of traffic violations is obtained from each driver, an annual Motor Vehicle Record is obtained, and that an annual review is performed on each driver's driving record. DEMCO must ensure that a three-year previous employment check is performed on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. DEMCO must ensure that every driver it plans to use has a valid commercial driver's license.**
- 5. DEMCO must establish a DOT controlled substance and alcohol testing program in compliance with 49 C.F.R. parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol**

Use and Testing) and provide evidence of this program to the Southern Service Center Field Administrator. DEMCO must use only those laboratories certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine specimens.

- 6. DEMCO must implement a dispatch system that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.**
- 7. DEMCO must ensure that all drivers are adequately trained in the requirements of the FMCSR and that they are able to accurately complete their RODS in accordance with those regulations.**
- 8. DEMCO must comply with all Orders issued by FMCSA.**

V. RESCISSION OF ORDER

Before resuming motor carrier operations, DEMCO must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations pose, and adequately demonstrate to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. DEMCO cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of equipment and/or direct assignment of contracts or other agreements for service by DEMCO requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. DEMCO must have the Order rescinded by the Southern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, DEMCO will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS IT INTENDS TO TAKE TO OVERCOME ITS NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF DEMCO TO COMPLY WITH THE FMCSR.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS. FOR PURPOSES OF THIS PARAGRAPH, "OWNERS AND COMPANY OFFICIALS" MEANS ANY PERSON OWNING MORE THAN A 10 PERCENT SHARE IN DEMCO, ALL REGISTERED CORPORATE OFFICERS AND ANY INDIVIDUAL RESPONSIBLE FOR OR PERFORMING HIRING, QUALIFYING, OR SCHEDULING OF DRIVERS, OR SCHEDULING OR DIRECTING VEHICLE INSPECTION, REPAIR AND/OR MAINTENANCE.**

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Southern Service Center with a copy to the Division Administrator, Texas Division, at the following addresses:

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

Division Administrator, Texas Division
Federal Motor Carrier Safety Administration
903 San Jacinto Blvd., Suite 101

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service Order may subject DEMCO to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. DEMCO may be assessed civil penalties of up to \$16,000 per day for each day it continues the proscribed interstate or intrastate operations after the effective date and time of this Order. (49 C.F.R. Part 386 App. A. § IV(g)). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521 (b)(6)(A)).

VII. ADDITIONAL PENALTIES FOR OTHER VIOLATIONS

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this ORDER. Penalties may be assessed for the violations of Federal requirements, including the FMCSR, previously discovered, discovered after the service of this ORDER, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of the issuance of this ORDER. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to the Field Administrator, Southern Service Center at the following addresses:

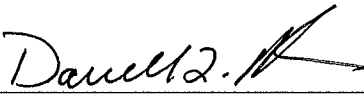
Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that DEMCO's operation constitutes an "imminent hazard" to the public.

**A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO
COMPLY WITH THIS ORDER IMMEDIATELY.**

Date: 5/25/12



Darrell Ruban, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration